

ACTION OLL-85-1581

STAT

# Office of Legislative Liaison

## Routing Slip

TO:	ACTION	INFO
1. D/OLL		X
3. DD/OLL		X
3. Admin Officer		
4. Liaison		X
5. Legislation	X	
6.		X
7.		X
8.		X
9.		
10.		

SUSPENSE 10 JUNE 85  
Date

STAT

STAT

Action Officer:

Remarks:

*Action complete per LTR dtd. 18 June*

*LTR. HAND CARRIED  
to Hill By*

3 JUNE 85

Name/Date

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OLL 85-1581

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**Office of Legislative Liaison**  
Routing Slip

TO:	ACTION	INFO
1. D/OLL		X
3. DD/OLL		X
3. Admin Officer		
4. Liaison		X
5. Legislation	X	
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SUSPENSE 10 JUNE 85  
Date

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Action Officer:	
Remarks:	

3 JUNE 85  
Name/Date

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## EXECUTIVE SECRETARIAT

## ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI		X		
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3	EXDIR		X		
4	D/ICS				
5	DDI				
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7	DDO		X		
8	DDS&T				
9	Chm/NIC				
10	GC		X		
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SUSPENSE		Date			

Remarks

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Executive Secretary

31 May 85

Date

3637 (10-81)

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**Page Denied**

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## U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE  
ON INTELLIGENCE

WASHINGTON, DC 20515

Executive Registry	
85-	2179

LEGISLATIVE LIAISON	
85-	1581

ILLEGIB

May 29, 1985

Honorable William J. Casey  
Director of Central Intelligence  
Washington, D.C. 20505

Record LEC

Dear Mr. Casey:

On June 25, 1985, the Subcommittee on Legislation of the House Permanent Select Committee on Intelligence will hold hearings on proposals to change the applicability of U.S. naturalization laws to U.S. intelligence sources. The Subcommittee invites you or your designee to appear at the hearing.

Although the Subcommittee would appreciate receiving your views on the specific provisions of Title VII of H.R. 1082 and the Administration's legislative proposal, the hearing will focus more broadly on the manner in which U.S. immigration and naturalization laws apply to U.S. intelligence sources.

The hearing will begin at 9:30 a.m. and will be conducted in closed session. I have asked Subcommittee Counsel Bernard Raimo and David S. Addington to contact your staff to work out the details.

Sincerely,

*Anthony C. Beilenson*  
Anthony C. Beilenson  
Chairman  
Subcommittee on Legislation

99TH CONGRESS  
1ST SESSION

# H. R. 1082

To improve the effectiveness of United States intelligence activities, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1985

Mr. STUMP introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence, the Committees on the Judiciary, Banking, Finance and Urban Affairs, Ways and Means, Foreign Affairs, Post Office and Civil Service, and Armed Services

## A BILL

To improve the effectiveness of United States intelligence activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That this Act may be cited as the "Omnibus Intelligence and  
4 Security Improvements Act".

### 5 TITLE I

6 SEC. 101. This title may be cited as the "Recurring  
7 Intelligence Authorization Provision Codification Act".

8 SEC. 102. (a) Title V of the National Security Act of  
9 1947 is amended by adding at the end thereof the following:

## **TITLE VI - MODIFICATION OF CERTAIN NATURALIZATION REQUIREMENTS**

### **Immigration and Nationality Act Amendment**

SEC. 601. Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end thereof the following new subsection:

"(g)(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that a petitioner otherwise eligible for naturalization has made a significant contribution to the national security or to the national intelligence mission, the petitioner may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of Section 313 of this Act, and no residence within the jurisdiction of the court shall be required.

(2) A petition under this provision may be filed, without regard to the residence of the petitioner, in any district court of the United States. The court shall conduct proceedings under this subsection in a manner consistent with the protection of intelligence sources, methods and activities."

1 "CONGRESSIONAL NOTIFICATION OF EXPENDITURES IN  
2 EXCESS OF PROGRAM AUTHORIZATIONS

3 "SEC. 502. During any fiscal year, funds may not be  
4 made available for any intelligence or intelligence-related ac-  
5 tivity unless such funds have been specifically authorized for  
6 such activity, or, in the case of funds appropriated for a dif-  
7 ferent activity, unless the Director of Central Intelligence or  
8 the Secretary of Defense has notified the appropriate com-  
9 mittees of Congress of the intent to make such funds avail-  
10 able for such activity, except that, in no case may reprogram-  
11 ming or transfer authority be used by the Director of Central  
12 Intelligence or the Secretary of Defense unless for higher  
13 priority intelligence or intelligence-related activities, based  
14 on unforeseen requirements, than those for which funds were  
15 originally authorized, and in no case where the intelligence or  
16 intelligence-related activity for which funds were requested  
17 has been denied by Congress."

18 (b) The table of contents of the National Security Act of  
19 1947 is amended by adding after the entry for section 501  
20 the following:

"Sec. 502. Congressional notification of expenditures in excess of program authori-  
zations."

21 TITLE II

22 SEC. 201. This title may be cited as the "Intelligence or  
23 Law Enforcement Defense Pretrial Notification Act".



1       SEC. 202. The Federal Rules of Criminal Procedure are  
2 amending by adding after rule 12.2 the following new rule:  
3 **"Rule 12.3 Notice of Intelligence or Law Enforcement**  
4 **Defense**

5       "(a) NOTICE AND DISCLOSURE BY DEFENDANT.—If  
6 the defendant intends to raise in his defense that, at the time  
7 of the alleged offense, he was, or believed he was, exercising  
8 the public authority of the United States on behalf of a Fed-  
9 eral intelligence or law enforcement agency, he shall file with  
10 the clerk and serve upon the attorney for the Government a  
11 written notice stating that he intends to raise the matter in  
12 his defense, stating the agency or agencies on whose behalf  
13 he was, or believed he was, acting, and stating the names  
14 and addresses of the witnesses upon whom he intends to rely  
15 to establish the matter. The defendant shall file and serve  
16 such notice at least twenty days prior to trial.

17       "(b) DISCLOSURE BY GOVERNMENT.—Within fifteen  
18 days after service upon the attorney for the Government by  
19 the defendant of the written notice of intention required by  
20 subdivision (a), the attorney for the Government shall file  
21 with the clerk and serve upon the defendant or his attorney a  
22 written notice stating the names and addresses of the wit-  
23 nesses upon whom the Government intends to rely on the  
24 issue whether at the time of the alleged offense, the defend-  
25 ant was, or believed he was, exercising the public authority

1 of the United States on behalf of a Federal intelligence or  
2 law enforcement agency.

3       “(c) CONTINUING DUTY TO DISCLOSE.—If prior to or  
4 during trial a party learns of an additional witness whose  
5 identity, if known, should have been included in the informa-  
6 tion furnished under subdivision (a) or (b), the party shall  
7 promptly notify the other party or his attorney of the exist-  
8 ence and name and address of such additional witnesses.

9       “(d) FAILURE TO COMPLY.—Upon the failure of either  
10 party to comply with the requirements of this rule, the court  
11 may exclude the testimony of any undisclosed witness offered  
12 by such party concerning whether, at the time of the alleged  
13 offense, the defendant was, or believed he was, exercising the  
14 public authority of the United States on behalf of a Federal  
15 intelligence or law enforcement agency. This subdivision  
16 shall not limit the right of the defendant to testify in his own  
17 behalf concerning whether he was, or believed he was, exer-  
18 cising the public authority of the United States on behalf of a  
19 Federal intelligence or law enforcement agency, but if the  
20 defendant so testifies without giving the written notice of  
21 intention required by subdivision (a), the court shall recess  
22 the trial for a reasonable time to permit the Government to  
23 prepare to meet the issue.

1       “(e) EXCEPTIONS TO TIME REQUIREMENTS.—For  
2 good cause shown, the court may allow late performance of  
3 acts required by this rule to be performed.

4       “(f) The provisions of this rule shall be in addition to,  
5 and shall not supersede, the provisions of the Classified Infor-  
6 mation Procedures Act (18 U.S.C. App.).”.

7                               **TITLE III**

8       SEC. 301. This title may be cited as the “Foreign Coun-  
9 terintelligence Investigation Improvements Act”.

10       SEC. 302. Section 1114(a) of the Right to Financial Pri-  
11 vacy Act of 1978 (12 U.S.C. 3414) is amended by adding at  
12 the end thereof the following new paragraph:

13       “(5)(A) Financial institutions, and officers, employees,  
14 and agents thereof, shall comply with a request pursuant to  
15 this subsection by the Federal Bureau of Investigation for  
16 financial records when such request has been approved by the  
17 Attorney General or his designee for foreign counterintelli-  
18 gence purposes.

19       “(B) Financial institutions, and officers, employees, and  
20 agents thereof, shall be immune from any civil or criminal  
21 liability for efforts to comply with a request described in sub-  
22 paragraph (A) of this paragraph.”.

23       SEC. 303. Section 6103(i) of title 26, United States  
24 Code is amended by adding at the end thereof the following  
25 new paragraph:

1           “(8) FEDERAL BUREAU OF INVESTIGATION  
2           COUNTERINTELLIGENCE ACTIVITIES.—Upon a deter-  
3           mination by the Attorney General that there is proba-  
4           ble cause to believe that a taxpayer is a foreign power  
5           or an agent of a foreign power (as defined in section  
6           101 of the Foreign Intelligence Surveillance Act of  
7           1978 (50 U.S.C. 1801)), the return of the taxpayer  
8           and return information which relates to such taxpayer  
9           shall, upon request for foreign counterintelligence pur-  
10          poses by the Federal Bureau of Investigation approved  
11          by the Attorney General, be open (to the extent of the  
12          approved request) to inspection by, or disclosure to, the  
13          Federal Bureau of Investigation.”.

14          SEC. 304. Section 204(a) of the State Department Basic  
15          Authorities Act of 1956 (22 U.S.C. 4304(a)) is amended by  
16          inserting “(1)” after “(a)” and adding at the end thereof the  
17          following:

18          “(2) Except as provided in paragraph (3) of this subsec-  
19          tion, the Secretary shall deny to any member of a foreign  
20          mission the benefit of travel within the United States to—

21                 “(A) an area in which exists a substantial concen-  
22                 tration of high-technology industry, as determined by  
23                 the Secretary of Commerce, or

1           “(B) an area in which exists any industry relating  
2           to militarily critical technologies, as determined by the  
3           Secretary of Defense.

4           “(3) The Secretary may confer upon a member of a for-  
5           eign mission the benefit of travel within the United States  
6           which would otherwise be prohibited by paragraph (2) of this  
7           subsection if the Director of the Federal Bureau of Investiga-  
8           tion, after consultation with the Secretary of Defense and the  
9           Director of Central Intelligence, has determined and certified  
10          that such travel is clearly consistent with the national secur-  
11          ity interests of the United States.

12          “(4) The acts authorized or required of the Secretary  
13          and the Director of the Federal Bureau of Investigation by  
14          paragraph (3) of this subsection shall be done on a case-by-  
15          case basis with respect to travel by a member of a foreign  
16          mission from any State which does not routinely permit mem-  
17          bers of United States missions to that State to travel without  
18          hindrance to areas in that State similar to those described in  
19          paragraph (2) of this subsection.”.

## 20                                   TITLE IV

21          SEC. 401. This title may be cited as the “Federal Em-  
22          ployee Unauthorized Disclosure of Classified Information  
23          Act”.

1       SEC. 402. (a) Chapter 93 of title 18, United States  
2 Code is amended by adding at the end thereof the following  
3 new section:

4       **"§ 1924. Unauthorized disclosure of classified information**  
5                   **by Federal personnel**

6       “(a) Whoever, being an officer or employee of the  
7 United States, intentionally discloses classified information to  
8 an individual not authorized to receive classified information  
9 shall be fined \$15,000 or imprisoned for not more than three  
10 years, or both.

11       “(b) It shall be a defense to prosecution under this sec-  
12 tion that the defendant reasonably believed that he had  
13 lawful authority to disclose the classified information in the  
14 circumstances.

15       “(c) Nothing in this section shall be construed to author-  
16 ize or permit the withholding of information from the  
17 Congress.

18       “(d) For purposes of this section—

19           “(1) ‘authorized’ means having authority, right, or  
20 permission pursuant to the provisions of a statute, Ex-  
21 ecutive order, directive of the head of any department  
22 engaged in foreign relations, national defense, or for-  
23 eign intelligence or counterintelligence activities, order  
24 of any court of the United States, or rule or resolution  
25 of the House of Representatives or the Senate;

1           “(2) ‘classified information’ has the meaning set  
2       forth in Section 1(a) of the Classified Information Pro-  
3       cedures Act (18 U.S.C. App.);

4           “(3) ‘discloses’ has the meaning set forth in Sec-  
5       tion 606(3) of the National Security Act of 1947 (50  
6       U.S.C. 426(3)); and

7           “(4) ‘officer or employee of the United States’  
8       means any member of the civil service or the uni-  
9       formed services as defined in section 2101 of title 5,  
10      United States Code.”.

11      (b) The table of contents of chapter 93 of title 18,  
12      United States Code is amended by adding at the end thereof  
13      the following:

          “1924. Unauthorized disclosure of classified information by Federal personnel.”.

14

## TITLE V

15      SEC. 501. This title may be cited as the “Federal Poly-  
16      graph and Prepublication Review Limitation Act”.

17      SEC. 502. (a) Chapter 73 of title 5, United States Code  
18      is amended by adding at the end thereof the following new  
19      subchapter:

### 20      “SUBCHAPTER VI—POLYGRAPH EXAMINATION 21                      AND PREPUBLICATION REVIEW

#### 22      “§ 7361. Definitions

23           “For purposes of this subchapter—

24           “(1) the term ‘classified information’ means infor-  
25           mation or material designated and clearly marked or

1 clearly represented, pursuant to the provisions of a  
2 statute or Executive order, or regulation or order  
3 issued pursuant thereto, as requiring a specific degree  
4 of protection against unauthorized disclosure for rea-  
5 sons of national security;

6 “(2) the term ‘polygraph examination’ means an  
7 interview with a person which is conducted in whole or  
8 in part for the purpose of enabling the examiner to  
9 make an inference or a determination, by evaluation of  
10 measured and recorded physiological responses, con-  
11 cerning whether the person has truthfully or deceptive-  
12 ly responded to inquiries made in such interview; and

13 “(3) the term ‘prepublication review’ means sub-  
14 missions of information for the purpose of permitting  
15 examination, alteration, excision, or other editing or  
16 censorship prior to disclosure of the information to  
17 anyone not authorized to have access to classified in-  
18 formation, but does not include any such submission  
19 with respect to information which is to be disclosed by  
20 a person in his official capacity.

21 **“§ 7362. Limitation on use of polygraph examination**

22 “(a) Except as provided in sections 7363 and 7365 of  
23 this title, no executive agency or military department may  
24 require, request, or represent that it may or will require or  
25 request, any person occupying, applying for, or under consid-



1 eration for a position in the civil service or the uniformed  
2 services to submit to a polygraph examination.

3       “(b) Except as provided in sections 7363 and 7365 of  
4 this title, no executive agency or military department may  
5 administer, or arrange for the administration of, a polygraph  
6 examination of any person occupying, applying for, or under  
7 consideration for a position in the civil service or the uni-  
8 formed services.

9       **“§ 7363. Law enforcement use of polygraph examination**

10       “An executive agency or military department may re-  
11 quest in writing that a person occupying, applying for, or  
12 under consideration for a position in the civil service or the  
13 uniformed services consent to a polygraph examination, and  
14 may administer or arrange for administration of such exami-  
15 nation upon receipt of that person's written consent, if—

16               “(1) the examination is to be administered as part  
17 of an investigation into alleged criminal conduct consti-  
18 tuting an offense punishable by death or imprisonment  
19 for a term exceeding one year or into an unauthorized  
20 disclosure of classified information;

21               “(2) means of investigation other than polygraph  
22 examination have been exhausted to the degree reason-  
23 able in the circumstances;

24               “(3) the person can reasonably be expected to  
25 have knowledge of importance to the investigation; and

1           “(4) the scope of the examination is limited to the  
2           subject matter of the investigation.

3   **“§ 7364. Limitation on prepublication review agreements**

4           “Except as provided in section 7365 of this title, no  
5   executive agency or military department may require, re-  
6   quest, or represent that it may or will require or request, that  
7   any person occupying, applying for, or under consideration  
8   for a position in the civil service or the uniformed services  
9   enter into an agreement requiring prepublication review.

10 **“§ 7365. Intelligence, counterterrorism and special access**  
11                   **program use of polygraph examination and**  
12                   **prepublication review**

13           “Sections 7362 and 7364 of this title shall not apply  
14 with respect to—

15           “(1) a person occupying, applying for, or under  
16   consideration for a position, detail or assignment in an  
17   agency within the Intelligence Community (as defined  
18   in section 3.4(f) of Executive Order 12333);

19           “(2) a person occupying, applying for, or under  
20   consideration for a position in the United States Secret  
21   Service or in the elements of the Federal Bureau of  
22   Investigation not within the Intelligence Community;  
23   or

24           “(3) a person occupying, applying for, or under  
25   consideration for a position in the civil service or the

1     uniformed services, if such individual has, or will have,  
2     access to particularly sensitive classified information  
3     within special access programs created pursuant to sec-  
4     tion 4.2(a) of Executive Order 12356.”.

5 (b) The analysis for chapter 73 of title 5, United States  
6 Code is amended by adding at the end thereof the following:

## “SUBCHAPTER VI—POLYGRAPH EXAMINATIONS AND PREPUBLICATION REVIEW

“7361. Definitions.

**"7362. Limitation on use of polygraph examination.**

"7363. Law enforcement use of polygraph examination.

**“7364. Limitation on prepublication review agreements.**

"7365. Intelligence, counterterrorism and special access program use of polygraph examination and prepublication review."

7 TITLE VI

8 SEC. 601. This title may be cited as the “Espionage  
9 and Treason Capital Punishment Procedures Act”.

10 SEC. 602. (a) Title 18, United States Code is amended  
11 by adding the following new chapter after chapter 228:

12       **“CHAPTER 228A—ESPIONAGE AND TREASON**

**13 CAPITAL PUNISHMENT PROCEDURES**

“Sec.

**“3591A. Definition.**

**“3592A. Sentence of death for espionage or treason.**

"3593A. Mitigating and aggravating factors.

**“3594A. Procedures for separate sentencing hearing.**

“3595A. Imposition of a sentence of death.

“3596A. Review of a sentence of death.

**14 “§ 3591A. Definition**

15        “For purposes of this chapter, the term ‘finder of fact’  
16 means the jury, or if there is no jury, the court.

1 **"§ 3592A. Sentence of death for espionage or treason**

2 "A defendant who has been found guilty of an offense  
3 described in section 794 or section 2381 of this title shall be  
4 sentenced to death if, after consideration of the factors set  
5 forth in section 3593A in the course of a hearing held pursu-  
6 ant to section 3594A, it is determined that imposition of a  
7 sentence of death is justified.

8 **"§ 3593A. Mitigating and aggravating factors**

9 "(a) In determining whether a sentence of death is justi-  
10 fied for an offense described in section 3592A, the finder of  
11 fact shall consider each of the following mitigating factors  
12 and determine which, if any, exist—

13 "(1) the defendant was less than eighteen years of  
14 age at the time of the offense;

15 "(2) the defendant's mental capacity was signifi-  
16 cantly impaired, although the impairment was not such  
17 as to constitute a defense to prosecution;

18 "(3) the defendant was under unusual and sub-  
19 stantial duress, although not such duress as would con-  
20 stitute a defense to prosecution; and

21 "(4) the defendant was an accomplice whose par-  
22 ticipation in the offense was relatively minor.

23 The finder of fact may consider whether any other mitigating  
24 factor exists.

25 "(b) In determining whether a sentence of death is justi-  
26 fied for an offense described in section 3592A, the finder of

1 fact shall consider each of the following aggravating factors  
2 and determine which, if any, exist—

3 “(1) the offense committed by the defendant di-  
4 rectly concerned nuclear weaponry; military or intelli-  
5 gence spacecraft or satellites; means of defense or re-  
6 taliation against large-scale attack; military operational  
7 plans; or communications intelligence or cryptographic  
8 information;

9 “(2) in the commission of the offense the defend-  
10 ant knowingly created a grave risk of substantial  
11 danger to the national security; and

12 “(3) in the commission of the offense the defend-  
13 ant knowingly created a grave risk of death to another  
14 person.

15 The finder of fact may consider whether any other aggravat-  
16 ing factor exists.

17 **“§ 3594A. Procedures for separate sentencing hearing**

18 “(a) If, in a case involving an offense described in sec-  
19 tion 3592A, the Government believes that the circumstances  
20 of the offense justify a sentence of death, the attorney for the  
21 Government shall, at a reasonable time before the trial, or  
22 before acceptance by the court of a plea of guilty, or at such  
23 time thereafter as the court may permit upon a showing of  
24 good cause, file with the court and serve on the defendant a  
25 notice stating that the Government believes that the circum-

1 stances of the offense justify a sentence of death if the de-  
2 fendant is found guilty. The court may permit the attorney  
3 for the Government to amend the notice upon a showing of  
4 good cause.

5       “(b) If the attorney for the Government has filed a  
6 notice as required under subsection (a) of this section and the  
7 defendant is found guilty of an offense described in section  
8 3592A, the judge who presided at the trial or before whom  
9 the guilty plea was entered, or another judge if that judge is  
10 unavailable, shall conduct a separate sentencing hearing to  
11 determine the punishment to be imposed.

12       “(c) The separate sentencing hearing required by sub-  
13 section (b) of this section shall be conducted before the jury  
14 which determined the defendant's guilt, except that the hear-  
15 ing shall be conducted before a jury specially impaneled for  
16 the purpose of the hearing if the defendant was convicted  
17 upon a plea of guilty or after a trial before the court sitting  
18 without a jury, or if, after initial imposition of a sentence  
19 under this chapter, reconsideration of the sentence under this  
20 chapter becomes necessary.

21       “(d) Notwithstanding subsection (c) of this section, the  
22 separate sentencing hearing required by subsection (b) of this  
23 section shall be conducted before the court alone, upon  
24 motion of the defendant with the approval of the attorney for  
25 the Government.

1       “(e) At the separate sentencing hearing required by sub-  
2 section (b) of this section, information may be presented as to  
3 any matter relevant to the sentence, including any mitigating  
4 or aggravating factor required or permitted to be considered  
5 under section 3593A, and may include the trial transcript  
6 and exhibits. Information relevant to the sentence may be  
7 presented by both the Government and the defendant regard-  
8 less of its admissibility under the rules governing admission of  
9 evidence at criminal trials, except that the court may exclude  
10 information if its probative value is substantially outweighed  
11 by the danger of unfair prejudice. The burden of establishing  
12 the existence of any aggravating factor is on the Govern-  
13 ment, and is not satisfied unless the existence of such a factor  
14 is established beyond a reasonable doubt. The burden of es-  
15 tablishing the existence of any mitigating factor is on the  
16 defendant, and is not satisfied unless the existence of such a  
17 factor is established by a preponderance of the information  
18 presented.

19       “(f) At the conclusion of the separate sentencing hearing  
20 required by subsection (b) of this section, the finder of fact  
21 shall return a special finding as to each mitigating and aggra-  
22 vating factor required to be considered under section 3593A,  
23 concerning which information is presented at the hearing. If  
24 the finder of fact is a jury, it must find the existence of any  
25 mitigating or aggravating factor or factors by a unanimous

1 vote. It shall be necessary to the imposition of a sentence of  
2 death that the finder of fact find that at least one aggravating  
3 factor required to be considered under section 3593A(b)  
4 exists.

5       “(g) If the finder of fact finds, at the conclusion of the  
6 separate sentencing hearing required under subsection (b) of  
7 this section, that at least one aggravating factor required to  
8 be considered under section 3593A(b) exists, the finder of  
9 fact shall then consider whether the aggravating factor or  
10 factors found to exist sufficiently outweigh the mitigating  
11 factor or factors, if any, found to exist to justify a sentence of  
12 death, or, in the absence of any mitigating factor, whether  
13 the aggravating factor or factors alone suffice to justify a  
14 sentence of death. Based upon this consideration, the jury by  
15 unanimous vote, or if there is no jury, the court, shall return  
16 a finding as to whether a sentence of death is justified.

17       “(h) In the case of a separate sentencing hearing re-  
18 quired under subsection (b) of this section which is held  
19 before a jury, the court shall instruct the jury that, in consid-  
20 ering whether a sentence of death is justified, it shall not  
21 consider the race, color, national origin, creed, or gender of  
22 the defendant. The jury shall, in addition to returning find-  
23 ings as required by this section, return to the court sworn  
24 certificates of each of the jurors that consideration of the  
25 race, color, national origin, creed, or gender of the defendant



1 was not involved in reaching juror's individual decision with  
2 respect to the findings returned.

3 **"§ 3595A. Imposition of a sentence of death**

4 "Upon a return of a finding under section 3594A(g) that  
5 a sentence of death is justified, the court shall sentence the  
6 defendant to death. In the absence of such a finding, the  
7 court shall impose any sentence other than death that is au-  
8 thorized by law, and, notwithstanding any other provision of  
9 law, the court may impose a sentence of life imprisonment  
10 without parole.

11 **"§ 3596A. Review of a sentence of death**

12 "(a) In a case in which a sentence of death is imposed,  
13 the sentence shall be subject to review by the court of ap-  
14 peals by the defendant. An appeal under this section of the  
15 sentence of death may be consolidated with an appeal of the  
16 judgment of conviction and shall have priority over all other  
17 cases.

18 "(b) In proceeding upon an appeal under subsection (a)  
19 of this section of a sentence of death, the court of appeals  
20 shall review the entire record in the case, including the infor-  
21 mation presented during the sentencing hearing, the proce-  
22 dures employed in the sentencing hearing, and the findings  
23 returned under section 3594A.

1       “(c)(1) In proceeding upon an appeal under subsection  
2 (a) of this section of a sentence of death, if the court of  
3 appeals determines that—

6           “(B) the information presented at the separate  
7           sentencing hearing required by section 3594A(b) sup-  
8           ports the special finding of the existence of an aggra-  
9           vating factor required to be considered under section  
10          3593A(b);

14       “(2) The court of appeals shall state in writing the rea-  
15 sons for its disposition of an appeal of a sentence of death  
16 under this section.”.

**“228A. Espionage and Treason Capital Punishment Procedures.....3591A”.**

## 1 TITLE VII

2 SEC. 701. This title may be cited as the "Foreign Intel-  
3 ligence Source Improvement Act".

4 SEC. 702. Section 7 of the Central Intelligence Agency  
5 Act of 1949, as amended (50 U.S.C. 403h) is amended by  
6 inserting "(a)" after "SEC. 7." and adding at the end thereof  
7 the following new subsection—

8 "(b)(1) The President may, notwithstanding any other  
9 law, naturalize as a citizen of the United States an alien  
10 admitted to the United States for permanent residence pursu-  
11 ant to subsection (a) of this section if—

12 "(A) the Attorney General determines and certi-  
13 fies to the President that the alien is a person of good  
14 moral character, attached to the principles of the Con-  
15 stitution of the United States and well disposed to the  
16 good order and happiness of the United States, and

17 "(B) the President finds that the foreign intelli-  
18 gence activities of the alien on behalf of the United  
19 States have contributed substantially to the security of  
20 the United States,

21 except that in no case shall the number of aliens naturalized  
22 in any fiscal year pursuant to this subsection exceed five.

23 "(2) Prior to naturalization under paragraph (1) of this  
24 subsection, an alien to be naturalized under such paragraph  
25 shall, before an officer of the executive branch designated for

1 the purpose by the President, take the oath of renunciation of  
2 former citizenship and acceptance of allegiance to the United  
3 States required of an alien naturalized under other provisions  
4 of law.

5       “(3) Notwithstanding any other law, a district court of  
6 the United States, upon application of the Attorney General  
7 under this subsection, shall, in a manner consistent with the  
8 protection of intelligence sources, methods and activities,  
9 issue or cause to be issued such documents relating to an  
10 alien naturalized by the President under this subsection as  
11 are issued relating to an alien naturalized under other provi-  
12 sions of law, and such documents relating to an alien natural-  
13 ized by the President shall have the same legal effect as doc-  
14 uments issued relating to an alien naturalized under other  
15 provisions of law.

16       “(4) The President may not delegate the authority  
17 granted in paragraph (1) of this subsection, anything in sec-  
18 tion 301 of title 3, United States Code, to the contrary not-  
19 withstanding.

20       “(5) The President shall notify the Permanent Select  
21 Committee on Intelligence of the House of Representatives  
22 and the Select Committee on Intelligence of the Senate each  
23 time the authority granted in paragraph (1) of this subsection  
24 is exercised.”.

1 TITLE VIII

2 SEC. 801. This title may be cited as the "Intelligence  
3 Identities Protection-Related Amendments".

4 SEC. 802. Section 8312(c)(1)(C) of title 5, United States  
5 Code is amended by striking the period at the end thereof and  
6 inserting in lieu thereof "or section 601 of the National Secu-  
7 rity Act of 1947 (50 U.S.C. 421) (relating to intelligence  
8 identities).".

9 SEC. 803. Section 2516(1)(a) of title 18, United States  
10 Code is amended by striking the first comma and inserting in  
11 lieu thereof ", section 601 of the National Security Act of  
12 1947 (relating to intelligence identities),".

13 TITLE IX

14 SEC. 901. This Act may be cited as the "Foreign Intel-  
15 ligence Surveillance Amendments".

16 SEC. 902. Section 105(e) of the Foreign Intelligence  
17 Surveillance Act of 1978 (50 U.S.C. 1805(e)) is amended by  
18 striking "twenty-four hours" each time it appears and insert-  
19 ing each time in lieu thereof "forty-eight hours".

20 SEC. 903. (a) Section 105(f)(1)(C) of the Foreign Intelli-  
21 gence Surveillance Act of 1978 (50 U.S.C. 1805(f)(1)(C)) is  
22 amended by striking the semicolon and inserting in lieu there-  
23 of ", except that, with the approval of the Attorney General  
24 or his designee, the contents may be retained and disseminat-

1 ed if they consist of information which indicates a threat of  
2 death or serious bodily harm to any person;”.

3 (b) Section 105(f)(2)(C) of the Foreign Intelligence Sur-  
4 veillance Act of 1978 (50 U.S.C. 1805(f)(2)(C)) is amended  
5 by striking the semicolon and inserting in lieu thereof  
6 “, except that, with the approval of the Attorney General or  
7 his designee, the information may be retained and dissemi-  
8 nated if it indicates a threat of death or serious bodily harm to  
9 any person;”.

10 SEC. 904. (a) Title II of the Foreign Intelligence Sur-  
11 veillance Act of 1978 is amended by adding at the end there-  
12 of the following new section:

13 “RELATIONSHIP TO CHAPTER 119 OF TITLE 18, UNITED

14 STATES CODE

15 “SEC. 202. Whenever, in a particular situation, the  
16 United States could obtain an order for interception of wire  
17 or oral communications under chapter 119 of title 18, United  
18 States Code, or an order for electronic surveillance under this  
19 Act, the United States may proceed under either statute, or  
20 both.”.

21 TITLE X

22 SEC. 1001. This title may be cited as the “Congressional  
23 Security Survey Act”.

24 SEC. 1002. Subject to the guidance of the Speaker and  
25 minority leader of the House of Representatives with respect  
26 to the House of Representatives, and subject to the guidance

1 of the majority and minority leaders with respect to the  
2 Senate, the Director of the Federal Bureau of Investigation,  
3 in cooperation with such Federal agencies as he deems ap-  
4 propriate, shall conduct a comprehensive survey of the per-  
5 sonnel, physical, document and communications security ar-  
6 rangements relating to classified information available to  
7 Members of Congress and employees of the legislative branch  
8 and report to the Speaker and minority leader of the House  
9 of Representatives, and the majority and minority leaders of  
10 the Senate, by January 3, 1986, with recommendations for  
11 improvement of such arrangements.

12 SEC. 1003. All Federal departments, agencies and in-  
13 strumentalities are authorized and directed to provide such  
14 assistance to the Director of the Federal Bureau of Investiga-  
15 tion as he may deem appropriate to carry out the provisions  
16 of section 1002.

17 SEC. 1004. There are hereby authorized to be appro-  
18 priated such sums as may be necessary to carry out the  
19 provisions of this title.

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## **TITLE VI - MODIFICATION OF CERTAIN NATURALIZATION REQUIREMENTS**

### **Immigration and Nationality Act Amendment**

**SEC. 601.** Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end thereof the following new subsection:

"(g)(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that a petitioner otherwise eligible for naturalization has made a significant contribution to the national security or to the national intelligence mission, the petitioner may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of Section 313 of this Act, and no residence within the jurisdiction of the court shall be required.

(2) A petition under this provision may be filed, without regard to the residence of the petitioner, in any district court of the United States. The court shall conduct proceedings under this subsection in a manner consistent with the protection of intelligence sources, methods and activities."



## TITLE VI - MODIFICATION OF CERTAIN NATURALIZATION REQUIREMENTS

Section 601 amends section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) to improve the ability of the United States to obtain foreign intelligence from sources abroad by authorizing the waiver of three requirements for naturalization for certain persons who have made significant contributions to the national security or to the national intelligence mission. The requirements are general residency and physical presence, the requirements imposed on members of certain organizations, and the requirement that the naturalization petition be filed in the court which has jurisdiction over the petitioner's place of residence.

Congress has established a number of conditions on the granting of United States citizenship. These are set forth in Chapter 2 of Title III of the Immigration and Nationality Act, 8 U.S.C. 1421 et seq. The Congress has recognized, however, that when necessary to other governmental interests, certain of these requirements should be reduced or waived entirely. Unfortunately, there remain some requirements of the Immigration and Nationality Act which prevent complete recognition of significant contributions to the national security or to the national intelligence mission, and limit the ability of the United States to recruit potential foreign intelligence sources. The proposed amendment seeks to remedy this situation by addressing three requirements which currently stand in the way of expeditious naturalization of individuals making such contributions. Under the proposed amendment, waivers would be authorized in recognition of outstanding contributions to the United States and of the fact that the character and quality of service to the United States by certain individuals demonstrates that there is no need for them to serve a probationary period of residence to prove their fitness for citizenship.

The waivers authorized by proposed subsection (b) are limited in nature. They would become operative only after the requisite finding by the Director of Central Intelligence (DCI), the Attorney General (AG), and the Commissioner of the Immigration and Naturalization Service (INS). Waivers would be authorized only for three very specific requirements for naturalization. Individuals granted such waivers would have to comply with all other naturalization requirements.

### Residence and Physical Presence

Section 316 of the Immigration and Nationality Act sets forth the residency and physical presence requirements which must be met by a petitioner. The establishment of these residency requirements reflects a determination by the Congress that such probationary periods are necessary in order for a petitioner to demonstrate his fitness for citizenship. Nevertheless, the Congress has also determined that for certain classes of petitioners these requirements are neither necessary nor appropriate. Thus, the Congress had determined that in certain cases the service which an individual has rendered to the United States demonstrates his fitness to become a citizen and merits expedited consideration. Among the classes of persons afforded such special treatment under the Immigration and Nationality Act in recognition of their service to the United States are: Individuals employed overseas by the United States Government, an American corporation engaged in the development of foreign trade or commerce, or, an American institution of research (§316(b)); employees of the United States Government employed abroad (§316(c)); merchant seamen on United States flag ships (§330), and; persons who have served in the Armed Forces of the United States (§328 and 329).

It also is clear that one of the classes of persons which the Congress has determined merits special consideration under the immigration and naturalization laws for their service to the United States are persons who have contributed to the national security. This determination is embodied in section 7 of the Central Intelligence Agency Act of 1949, 50 U.S.C. 403h. Section 7 permits the admission of a limited number of persons to permanent resident alien status notwithstanding their inadmissibility under the immigration laws if the DCI, AG, and the Commissioner of INS determine that such admission would be "in the interest of national security or essential to the furtherance of the national intelligence mission."

The Congress also has recognized that there must be some flexibility concerning naturalization of such persons. Accordingly, in subsection (c) of section 316 of the Immigration and Nationality Act, the Congress has seen fit to relax certain residency requirements for the naturalization of persons who are employed by or contractors of the Central Intelligence Agency. In the case of Victor Ivanovich Belenko,

the Soviet Air Force pilot who defected to the West, the Congress saw fit to waive the residency requirements for naturalization as well as the impediments to naturalization imposed by Mr. Belenko's prior membership in the Communist Party and the requirement as to the place of filing his petition. (Private Law 96-62; see Senate Report 96-963).

Given the importance of expedited naturalization for individuals, not citizens of the United States, who are in a position to make significant contributions to the national intelligence mission, this provision will provide the United States with an ability to offer such an inducement to potential foreign intelligence sources abroad. In virtually all these cases at present, such expeditious action is foreclosed by the requirements of Section 316.

The delay which these individuals must face in complying with existing law is often a serious blow to their aspirations of becoming full fledged members of the American community. Current law eliminates an opportunity to stimulate future contributions to our national security by those who might be encouraged to cooperate with us on account of the availability of a smooth and swift transition to United States citizenship.

It is possible to overcome these problems through the enactment of private bills, as in the Belenko case. Obtaining a private bill, however, entails explaining the individual's contribution and why it merits expeditious naturalization. This is often impossible, because in many cases even the slightest publicity would jeopardize the individual's security and could diminish the value of his contribution to the intelligence mission. This is particularly true when the United States is taking affirmative measures to conceal an individual's identity or the nature of his contribution to the intelligence mission.

Proposed subsection (g)(1) establishes a systematic method of recognizing the importance of services rendered to the United States by certain individuals by permitting the Director of Central Intelligence, the Attorney General and Commissioner to waive the residency and physical presence requirements of section 316 in appropriate cases. This waiver will recognize the contributions of these individuals by allowing them to petition immediately for naturalization without having to endure an unnecessary probationary period. The individuals who would benefit from the proposed waiver authority would already have demonstrated their fitness to become citizens and their commitment to the United States.

Proposed subsection (g)(1) is consistent with the existing structure of the naturalization laws, which already permit the waiver of these requirements for other classes of individuals

further, it builds upon the Congressional recognition, embodied in Section 7 of the Central Intelligence Agency Act of 1949, subsection (c) of Section 316, and the Belenko legislation, that the requirements of the immigration and nationality laws should be flexible in application to persons who make a substantial contribution to the national intelligence mission.

#### Membership in Prohibited Organizations

Section 313 of the Immigration and Nationality Act, 8 U.S.C. 1424, prohibits the naturalization of individuals who are members of certain prohibited organizations or who espouse certain political ideologies. Its principal thrust is directed against persons who are members of the Communist Party in any of its various manifestations worldwide, in effect barring them from naturalization.

Subsection 313(c), however, provides an exception to this general exclusion. It permits petitioners who otherwise would be barred by Section 313 to petition for naturalization provided that, at the time of petitioning, more than ten years have elapsed since termination of their membership in the prohibited organization. This is, in effect, a ten year probationary period for former members of the Communist Party, during which they must demonstrate that they have shed their attachment to the Party, its principles and goals, and are otherwise fit for citizenship.

Section 313 imposes some special difficulties vis-a-vis the national intelligence mission in that some of the most important contributions to that mission are made by individuals who were members of the Communist Party. Indeed, their ability to contribute to this mission is normally enhanced by their Communist Party membership. Proposed subsection (g)(1) would permit waiver of this ten year bar for persons who have made significant contributions to the national intelligence mission.

As with the residency requirements of Section 316, the probationary period established by Section 313(c) is not needed in the case of these individuals. By their service to the national intelligence mission, they have demonstrated, usually at the risk of their lives, that they have effectively foresworn Communism and are fit candidates for United States citizenship. They need no probationary period to prove that fitness.

#### Residence Within the Jurisdiction

Section 316(a) of the Immigration and Nationality Act, 8 U.S.C. 1427(a), taken together with other sections of that Act, requires a petitioner to file his petition for naturalization in the court which has jurisdiction over his place of residence. In effect, this means that the petitioner must file in the State in which he spends the last six months of required State residency.

A waiver of the physical presence and residency requirements of Section 316 also necessitates a waiver of this procedural requirement. Petitioners benefiting from a waiver of the physical presence and residency requirements most likely will not have a permanent place of residence at the time of filing their petitions; hence, there will be no court with jurisdiction over the place of residence. Section 328 of the Immigration and Nationality Act is illustrative in this regard. In Section 328 the Congress has seen fit to waive the physical presence and residency requirements on the basis of service in the armed forces, and the requirement for residence within the jurisdiction is waived as well.

A waiver of the Section 316(a) requirement for individuals who have made significant contributions to the national intelligence mission also follows from the circumstances of individuals involved. Not only might they lack established residences, but it may be advisable for the United States, for reasons of security, to have the petition filed at a particular location.

#### Proceedings under this Subsection

Subsection (g)(2), together with the last sentence of subsection (g)(1), make it clear that a naturalization petition which arises under this section may be filed in any district court. Subsection (g)(2) also mandates that the naturalization proceeding be conducted so as to insure the protection of intelligence sources and methods from unauthorized disclosure.

As noted above, the petitioner in such cases often has not had the opportunity to establish residency in a particular location in the United States. In addition, security concerns and the interests of the government may require that the individual reside in a particular place or not reside in other places. Accordingly, subsection (g)(2) provides that a naturalization petition in such cases can be filed in any district court in the United States, and that such petitions are to be accepted for adjudication by the court in which they are filed.

Information involved in such naturalization proceedings will, by definition, be quite sensitive and revealing of the national intelligence mission. All information necessary to the adjudication of the petition, must, of course, be presented to the court. Yet, at the same time, information concerning intelligence sources and methods must be protected from unauthorized disclosure. No particular procedure is required. It instead is left to the discretion of the court and the

government to insure that appropriate procedures, e.g., sealing of the record, are utilized.

### Conclusion

In sum, the proposed amendment is needed to enhance the ability of the United States to collect information from and recruit foreign intelligence sources and is warranted as a recognition of the significant contributions made by certain individuals to the national intelligence mission. It is narrowly drawn, building upon previous legislative enactments in the area of intersection between the national intelligence mission and the immigration and nationality laws.